



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Matthew J. Strickler
Secretary of Natural Resources

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Director
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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
THE ESTATE OF ISAAC KING SR.
FOR
IH KING GROCERY
Facility ID No. 4009149**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Estate of Isaac King Sr., for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Estate" means the Estate of Isaac King Sr. Estate is a "person" who owns the Facility.
6. "Facility" means the physical location where the UST and/or UST system is installed and/or operated, known as the I. H. King Grocery, located at 13759 Newtown Rd. in Newtown, Virginia. The Facility's UST and/or UST system are owned by the Estate, and the Facility is further identified by UST Facility ID# 4009149.
7. "Financial Responsibility" means the ability to demonstrate that one has the financial resources available to pay for the costs of containment and cleanup and third party lawsuits in the event of a release from an UST or UST system.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Owner" means any person who owns an UST system used for storage, use, or dispensing of regulated substances as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
12. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.
13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
14. "Regulated Substance" means an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment, as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
15. "Regulations" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*
16. "Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 9 (Va. Code §§ 62.1-44.34:8 through 62.1-44.34:9) of the State Water Control Law addresses Storage Tanks.
18. "Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. The Estate is the owner of the Facility. The Estate stores a regulated substance in the form of gasoline in USTs at the Facility.
2. During DEQ inspections of the Facility on September 23, 2009, October 26, 2011, March 27, 2014, August 11, 2017, and December 5, 2018, the Estate failed to make records of tank and piping release detection for the two active USTs at the Facility (herein referred to as USTs 1 and 2) immediately available for inspection or readily available at an alternative site and failed to make them available upon DEQ's request. The totality of the circumstances indicates that tank and piping release detection for USTs 1 and 2 have not been conducted since 2009 or before.

9 VAC 25-580-130 requires UST owners and operators to provide a method, or combination of methods, of release detection that can detect a release from any portion of the tank and the connected underground piping that routinely contains product and is installed and calibrated in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition. See also 9 VAC 25-840-140.

9 VAC 25-580-180 requires UST system owners and operators to maintain release detection records in accordance with 9 VAC 25-580-120, including results of any sampling, testing, or monitoring, for at least one year.

9 VAC 25-580-120 requires documentation of compliance with release detection to be maintained at the UST site and immediately available for inspection or at a readily available alternative site and be provided for inspection upon request.
3. During DEQ inspections of the Facility on September 23, 2009, October 26, 2011, March 27, 2014, August 11, 2017, and December 5, 2018, the Estate failed to provide documentation that the cathodic protection system for USTs 1 and 2 had been tested in

the past three years, and the documents were not made available upon DEQ's request. The totality of the circumstances indicates that the cathodic protection system for USTs 1 and 2 has not been tested since before 2009.

9 VAC 25-580-90(2) requires all UST systems equipped with cathodic protection systems to be inspected for proper operation by a qualified cathodic protection tester within six months of installation and at least every three years thereafter in accordance with a code of practice developed by a nationally recognized association.

9 VAC 25-580-90(4) requires records of the operation of cathodic protection to be maintained (in accordance with 9 VAC 25-580-120) to demonstrate compliance with the performance standards in this section. These records must include the results of testing from the last two inspections required by 9 VAC 25-580-90(2).

9 VAC 25-580-120(3) requires these records to be maintained at the UST site and immediately available for inspection or at a readily available alternative site and be provided for inspection upon request.

4. During DEQ inspections of the Facility on September 23, 2009, October 26, 2011, March 27, 2014, August 11, 2017, and December 5, 2018, the Estate failed to make Class A, B, and C operator training documentation immediately available for inspection or readily available at an alternative site and failed to make them available upon DEQ's request. The totality of the circumstances indicates that the Facility does not have certified Class A, B, and C operators.

9 VAC 25-580-125 requires owners and operators to designate Class A, Class B, and Class C operators for each UST system or facility that has underground storage tanks. Class A operators shall successfully complete a training course approved by the board that includes a general knowledge of UST system requirements. Class B operators shall successfully complete a training course approved by the board that includes an in-depth understanding of operation and maintenance aspects of the UST systems and related regulatory requirements. At a minimum, training provided by the tank owner or Class A or B operator shall enable the Class C operator to take action in response to emergencies caused by spills or releases and alarms from an underground storage tank.

9 VAC 25-580-120(2)(e) requires owners and operators to maintain documentation of operator training required by 9 VAC 25-580-125, including verification of training for current Class A, Class B, and Class C operators, and a current list of operators and written instructions or procedures for Class C operators in accordance with 9 VAC 25-580-125 (relating to operator training).

9 VAC 25-580-120(3) requires these records to be maintained at the UST site and immediately available for inspection or at a readily available alternative site and be provided for inspection upon request.

5. Based on a records review conducted on February 21, 2019, the Estate has failed to demonstrate financial responsibility for the USTs at the Facility.

9 VAC 25-590-40(A) and (B) state,
 - A. Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in the following per-occurrence amounts:
 1. For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million.
 2. For all other owners or operators of petroleum underground storage tanks; \$500, 000.
 - B. Owners and operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:
 1. For owners and operators of 1 to 100 petroleum underground storage tanks, \$1 million; and
 2. For owners and operators of 101 or more petroleum underground storage tanks, \$2 million.
6. On September 9, 2010 and June 12, 2014, the Department issued Notices of Violation No. 10-09-PRO-501 and 14-6-PRO-500 for violations listed in paragraphs C(2) through C(5), above.
7. Based on the results of the DEQ inspections on September 23, 2009, October 26, 2011, March 27, 2014, August 11, 2017, and December 5, 2018 and the file review on February 21, 2019, the Board concludes that the Estate has violated 9 VAC 25-580-90, 9 VAC 25-580-120, 9 VAC 25-580-125, 9 VAC 25-580-130, 9 VAC 25-580-180, and 9 VAC 25-590-40, as described in paragraphs C(2) through C(5), above.
8. In order for the Estate to return to compliance, DEQ staff and representatives of the Estate have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Estate, and the Estate agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$10,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The Estate shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the Estate shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Estate for good cause shown by the Estate, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order, and in NOV No. 10-09-PRO-501 dated September 9, 2010 and NOV No. 14-6-PRO-500. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Estate admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Estate consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Estate declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other

administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by the Estate to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Estate shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Estate shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Estate shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Estate.
11. This Order shall continue in effect until:

- a. the Director or his designee terminates the Order after the Estate has completed all of the requirements of the Order;
- b. the Estate petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Estate.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Estate from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the Estate and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the Estate certifies that he or she is an executor of the Estate authorized to enter into the terms and conditions of this Order and to execute and legally bind the Estate to this document. Any documents to be submitted pursuant to this Order shall also be submitted by an authorized representative of the Estate.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the Estate voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 9th day of MARCH, 2020.



Jeffrey A. Steers
Interim Director, Division of Enforcement
Department of Environmental Quality

The Estate of Isaac King Sr. voluntarily agrees to the issuance of this Order.

Date: 1-12-2020 By: Clara B Williams, Executive
(Person) (Title)
The Estate of Isaac King Sr.

Commonwealth of Virginia

City/County of King & Queen

The foregoing document was signed and acknowledged before me this 12 day of

January, 2020 by CLARA B WILLIAMS who is

EXECUTIVE of the Estate of Isaac King Sr., on behalf of the Estate.

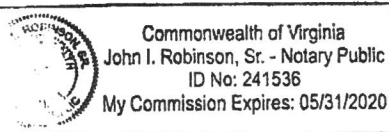
John I. Robinson Sr
Notary Public

241536

Registration No.

My commission expires: 5-31-2020

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Tank Closure

- a. Within six months of the date of this Order, the Estate shall permanently close the USTs at the Facility in accordance with 9 VAC 25-580-320 of the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation.
- b. The Estate shall notify DEQ at least fourteen days prior to commencing closure of the USTs at the Facility.
- c. The Estate shall allow DEQ access to the Facility during the UST closure process.

2. Closure Records

- a. Within 30 days of permanent closure of the USTs at the Facility, the Estate shall submit all closure records required in accordance with 9 VAC 25-580-350 and 9 VAC 25-580-120.

3. DEQ Contact

Unless otherwise specified in this Order, the Estate shall submit all requirements of Appendix A of this Order to:

Carla Pool
Enforcement Adjudication Manager
VA DEQ – Central Office
P.O. Box 1105
Richmond, VA 23218
(804) 698-4150
Carla.Pool@deq.virginia.gov